

201 KAR 11:190. Rules of practice and procedure before the Kentucky Real Estate Commission.

RELATES TO: KRS 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5)

STATUTORY AUTHORITY: KRS 324.151(1), (3), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) requires the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or before suspending or revoking a license. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission and the required forms for a complaint or answer.

Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:

(a) Allege a prima facie case of specific violation of KRS 324.160 in accordance with KRS 324.151;

(b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;

(c) Be notarized by a notary public;

(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report; and

(e) Be filed within two (2) years from:

1. Actual knowledge of the cause of action; or

2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.

(2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of KRS 324.160, the aggrieved party shall file a Sworn Supplement to Complaint in accordance with KRS 324.151.

(3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:

(a) Identify the respondent;

(b) State his responses to the complaint;

(c) Be notarized by a notary public; and

(d) Include a copy of the following documents:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency disclosure form; and

5. Settlement statement.

(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:

(a) 1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and

(b) Notify the complainant and respondent of its decision in writing. The notification shall in-

clude a brief statement explaining the commission's reasons for the decision.

Section 2. Motions. (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.

(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.

(3) A party shall be given an opportunity to respond to a motion.

Section 3. Withdrawal of a Complaint. A complainant may withdraw a complaint if:

(1)(a) An answer has not been filed in accordance with KRS 324.151; and

(b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or

(2)(a) There is good cause for the withdrawal; and

(b) The commission approves the withdrawal.

Section 4. Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:

(a) There are:

1. Common questions of law or fact; or

2. Identical issues or witnesses; and

(b) Consolidation is appropriate.

(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Sworn Statement of Complaint" 3/01 edition, Kentucky Real Estate Commission;

(b) "Sworn Answer to Complaint", 7/98 edition, Kentucky Real Estate Commission; and

(c) "Sworn Supplement to Complaint", 10/00 edition, Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. (12 Ky.R. 630; eff. 12-10-85; Am. 1603; eff. 5-6-83; 24 Ky.R. 2733; 25 Ky.R. 294; eff. 8-17-98; 27 Ky.R. 1513; 2710; eff. 4-9-2001.)